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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,657

09/07/2006

Bradley J. Crosby

006538.00010

8596

22908 7590 02/26/2010
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EXAMINER

LAUX, JESSICA L

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

02/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/598,657	Applicant(s) CROSBY ET AL.	
	Examiner JESSICA LAUX	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-22 and 25-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-22, 25-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 8/11/2009 have been fully considered but they are not persuasive. The vertical plate member of Boeshart certainly is attachable; it is clearly attached to the wing extension as noted below and therefor must be attachable, or capable of being attached to the wing extension.

The vertical plate members of Boeshart clearly are partially encapsulated by the foam panels as seen in the figures where portions of the vertical plate members are within the foam panel (see figure 1).

Applicant's argument that the first and second wing extension do not extend outwardly from one another to define an angle as claimed is not persuasive as they clearly do (see rejection explanation below).

Applicant's argument that the vertical plate members of Boeshart are not capable of having an outside facing attached thereto are not persuasive for several reasons 1) that is not a claimed feature and therefore not required to be anticipated by the prior art; and 2) they are capable of having an outer facing attached by many methods including adhesive or mechanical means.

Claim 3 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claim is redundant with claim 1 and imparts no further limitations.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,6-10, 12-13,15-22, 25-27, 29,30, 33, 34, 35,36, 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Boeshart (4916879).

Claims 1,3,12,13,15,16, 22, 26,33,34,35 . Boeshart discloses a corner bracket for use in combination with an insulating foam form for concrete and cement wall construction, said corner bracket comprising:

a first generally horizontal assembly (20) including a first (2a, 50) and second (20b, 52) wing extensions projecting respectively laterally from each other and are connected together at a seam defining an apex (as seen in figure 2), said wing extensions forming an included angle; and including a first plate member (32) and a second plate member (34), of substantially equal size and spacing from the seam;

said assembly including a bracing element (44,46,54, 56) for maintaining the first and second wing extensions substantially at the included angle; and

at least one separate, generally vertical plate member (58,60 or 62, 64 and the included extending rod) attachable to at least one wing extension of the assembly and extending substantially vertically with respect to the said wing extensions to comprise an attachment element upon at least partial encapsulation of said plate member in a foam form panel; and

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a first panel (12 a or b) of foam material encapsulating at least in part one of said first and second wing extensions and said vertical plate attached thereto (as seen in figure 1).

Claim 2. The bracket of claim 1 wherein the assembly comprises first and second wing extensions substantially at 90° to each other (as seen in for example figure 2).

Claims 6,29, 36. The bracket of the claims above further including at least one generally horizontal bracket extension (22) within the included angle defined by the first and second wing extensions.

Claim 7. The bracket of claim 1 further including at least one bracket extension (22) within the included angle defined by the first and second wing extensions and generally bisecting the angle.

Claim 8. The bracket of claim 1 further including at least one bracket extension (22) within the included angle defined by the first and second wing extensions and generally extending from an intersection of the first and second wing extensions (at 48).

Claims 9-10. The bracket of claim 1 wherein the included angle is less than, or greater than 90° (Col. 2, line 65- Col. 3, line 2).

Claim 17. The bracket of claim 13 further including a bracket element (22) extending from the seam and generally bisecting the included angle between the first and second wing extensions.

Claim 18. The bracket of claim 13 wherein the first and second wing extensions define a substantially 90° included angle (Col. 2, lines 65-67).

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Claim 19. The bracket of claim 13 wherein at least one of the first and second wing extensions include a generally vertical track (58,62) for cooperation with a plate member.

Claim 20. The bracket of claim 13 wherein the included angle is less than about 90°.

Claim 21. The bracket of claim 13 including a horizontal element (22) extending from the seam for a distance capable of at least partial encapsulation of said horizontal element in a second foam panel spaced from a first foam panel at least partially encapsulating at least one wing extension (as seen in figures 1,3,5).

Claim 25,27,30, 37. The bracket of the claims above further including a first foam panel (12a) at least partially encapsulating at least one wing extension and a said plate member and further including a second foam panel (12c) at least partially encapsulating the bracket element, said first and second foam panels being separated from each other to define at least part of a mold cavity.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4,5,11,28,31,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boeshart (4916879).

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Claim 11. Boeshart discloses the bracket of claim 1 but does not expressly that the bracket is comprised of a molded plastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bracket of Boeshart to be made of a molded plastic material due to its efficient manufacturing and cost, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 4,28,31. Boeshart discloses the bracket as noted above, but does not expressly disclose that the vertical plate member is slidable attached to the wing extension. At the time the invention was made it would have been obvious to one of ordinary skill in the art to modify the vertical plate member of Boeshart to be slidable attached (via the extending rod) to the wing extension to allow the vertical plate member to move thereby accommodating varying thicknesses of foam panels;

And also to include a detent and stop mechanism to position the vertical plate member at a desired location thereby creating a bracket that securely connects to foam panels of varying thicknesses (where a detent and stop mechanism is a notoriously common method of positioning member relative to each other and one skilled in the art would likely have the common sense to pursue such known and commonly used technique to achieve the desired and predictable result).

Allowable Subject Matter

The indicated allowability of claims 4-5 is withdrawn in view of the interpretation/understanding of Boeshart necessitated by applicant's amendments to the claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA LAUX whose telephone number is (571)272-8228. The examiner can normally be reached on Monday thru Thursday, 9:00am to 5:00pm (est).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./
Supervisory Patent Examiner, Art Unit 3635

/J. L./
Examiner, Art Unit 3635